

EXHIBIT Q

Benforado, Nathaniel H.

From: Kelly Talcott [kelly@kdtalcott.com]
Sent: Wednesday, April 23, 2014 6:12 PM
To: Benforado, Nathaniel H.
Cc: Ted Max; Bart, Andrew H.; Thomas Monahan; Ken Anderson
Subject: Re: TufAmerica v. Diamond, et al.
Attachments: 4 16 Order.pdf

Nate, TufAmerica will not withdraw its claims. I have in earlier emails explained TufAmerica's position, but it can be summed up as follows -- there are still questions concerning the authenticity of the "Exclusive Recording Agreement" (UMG000174); neither the "Letter of Inducement" (UMG000167) nor the December 10, 1984 letter (UMG000172) clarify those questions; and there are ambiguities in the "Exclusive Recording Agreement" that, even if it is genuine, call into question whether "Say What" and "Let's Get Small" were included in any rights transfers that may have taken place. Further, it appears that both "Say What" and "Let's Get Small" were issued by D.E.T.T., a Trouble Funk-owned label, before the date of the "Exclusive Recording Agreement," and copyrights to both songs were registered by Messrs. Fisher, Avery, and Reed in their names. It also appears that the "In Times of Trouble" album was issued by D.E.T.T., and not Island, so there is a question of to what extent Island performed under the "Letter of Inducement" and the December 10, 1984 letter.

There may be other issues with respect to these documents that I have not set forth here, and I reserve on TufAmerica's behalf its right to raise those issues at any time.

In short, there is not nearly enough clarity concerning the situation so that TufAmerica could justify dismissing its claims.

Depositions

Mr. Avery is available on April 30 for his deposition.

Mr. Fisher is available on May 1 for his.

Both will be in DC; your firm's offices are fine.

Joint Letter Due

We have a more pressing matter we need to attend to at well. Judge Nathan apparently still would like us to submit the joint letter called for by her April 16, 2014 order, which I've attached. Her clerk called me this evening to ask for that. To jumpstart things, here are my proposed inserts:

1) (statement confirming that all fact discovery has been completed): At the parties' request, the Court granted an extension of fact discovery until May 5, 2014.

2) (statement regarding status of settlement discussions; whether parties would like a referral to Mag. Judge or court-annexed Mediation): The parties have not had substantive settlement discussions. Plaintiff requests that the Court refer the parties to the Magistrate Judge for purposes of conducting settlement discussions.
[Defendant insert.]

3) (statement regarding whether any party intends to move for summary judgment on or before the deadline in the CMP (that is, July 9). Given that fact discovery has not yet completed, Plaintiff has not yet determined whether it will move for summary judgment. [Defendant insert.]

4) (If no party intends to move for SJ, propose (a) deadline for joint pre-trial order and (b) potential trial dates). Plaintiff requests that this issue be addressed following the close of fact discovery. [Defendant insert].

If you can provide your inserts, I will draft and circulate a combined letter. We should shoot for getting it filed by noon tomorrow.

Best regards,

Kelly

On Wed, Apr 23, 2014 at 4:47 PM, Benforado, Nathaniel H. <NBenforado@jenner.com> wrote:

Kelly,

We have not yet received your final position on whether TufAmerica will withdraw its claim or the basis for continuing the action in light of the produced documents. You have now had more than sufficient time to discuss this issue with your client. If you do not withdraw the claims and force us to incur the expense of continuing defending this action, including taking depositions, such expense will factor into any sanction motion we pursue. We request that you either withdraw the claims immediately or provide us with the basis for continuing the action; if you elect to continue this action, please provide us with confirmed dates for Fisher and Avery's depositions next week.

Best,

Nate

-----Original Message-----

From: Ted Max [mailto:TMax@sheppardmullin.com]

Sent: Tuesday, April 22, 2014 10:10 PM

To: Bart, Andrew H.

Cc: Kdtalcott; Benforado, Nathaniel H.; Thomas Monahan; Ken Anderson

Subject: RE: TufAmerica v. Diamond, et al.

Dear Andy:

I understand. I just have a difficult schedule next week (I think we both have a similar schedule on Tuesday) so that is why I have a preference for a long Thursday. Let's see what Kelly can do in terms of scheduling.

Best regards, Ted

Theodore C. Max

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mailto:TMax@sheppardmullin.com | <http://www.sheppardmullin.com/tmax>

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-----Original Message-----

From: Bart, Andrew H. [mailto:ABart@jenner.com]

Sent: Tuesday, April 22, 2014 10:07 PM

To: Ted Max

Cc: Kdtalcott; Benforado, Nathaniel H.; Thomas Monahan; Ken Anderson

Subject: Re: TufAmerica v. Diamond, et al.

we could start Wednesday at 11 and Thursday at 9. That way we can go down Wednesday morning and come back Thursday late afternoon. Doing it all on Thursday means we have to come down Wednesday night. I think that is harder with no benefit.

Ted Max <TMax@sheppardmullin.com> wrote:

Dear Kelly:

The Thursday starting early and going all day is better for me than the Wednesday-Thursday in terms of preferences. What time would the Wednesday deposition commence. That being said, Andy is taking the lead on this. Do we have dates for the TufAmerica, Inc. folks? I will get dates for Michael Diamond and Adam Horovitz shortly.

Best regards, Ted

Theodore C. Max

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-----Original Message-----

From: Kdtalcott [mailto:kelly@kdtalcott.com]

Sent: Tuesday, April 22, 2014 6:50 PM

To: Bart, Andrew H.

Cc: Ted Max; Benforado, Nathaniel H.; Thomas Monahan; Ken Anderson

Subject: Re: TufAmerica v. Diamond, et al.

Thanks for clarifying. Is Weds-Thurs acceptable to everybody else?

kdt

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kelly@kdtalcott.com

> On Apr 22, 2014, at 6:28 PM, "Bart, Andrew H." <ABart@jenner.com> wrote:

>

> Next Thursday is possible but I would strongly prefer Wednesday for

> Avery and Thursday for fisher. An overnight is unavoidable because the

> only way we get tis done on Thursday is to start very early- like 9.

> Tuesday doesn't work

>

>

>

> On Apr 22, 2014, at 5:23 PM, "Ted Max"

<TMax@sheppardmullin.com<mailto:TMax@sheppardmullin.com>> wrote:

>

> Dear Kelly:

>

> Tuesday is problematic for me due to a Court obligation so Thursday is preferred.

>

> Best regards, Ted

>

> Theodore C. Max

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>

> From: Kelly Talcott [<mailto:kelly@kdtalcott.com>]

> Sent: Tuesday, April 22, 2014 6:20 PM

> To: Benforado, Nathaniel H.

> Cc: Ted Max; Bart, Andrew H.; Thomas Monahan; Ken Anderson

> Subject: Re: TufAmerica v. Diamond, et al.

>

> FYI, I'm trying to get Avery and Fisher available on the same day in DC. It would be either Tuesday or Thursday because Fisher has dialysis M/W/F. I'll let you know as soon as I know either way.

>

> kdt

>

> On Tue, Apr 22, 2014 at 10:11 AM, Kelly Talcott <kelly@kdtalcott.com<mailto:kelly@kdtalcott.com>> wrote:

> Good idea. Let me see what I can do.

>

> Thanks,

>

> Kelly

>

> On Mon, Apr 21, 2014 at 9:02 PM, Benforado, Nathaniel H.
<NBenforado@jenner.com<mailto:NBenforado@jenner.com>> wrote:

> Kelly,

>

> If we are going to have to travel to D.C. for Fisher, we'd like to combine it with Avery to avoid unnecessary travel. We propose either doing both Avery and Fisher on Thursday, April 24th, or Avery on Wednesday, April 30th (beginning a little later, around 11 or 11.30 a.m.) and Fisher on Thursday May 1st. Please let us know if one of these combinations will work as soon as possible. We are happy to host the depositions in our D.C. office.

>

> Best,

> Nate

>

> From: Kelly Talcott

> [mailto:kelly@kdtalcott.com<mailto:kelly@kdtalcott.com>]

> Sent: Friday, April 18, 2014 4:16 PM

>

> To: Benforado, Nathaniel H.

> Cc: Ted Max; Bart, Andrew H.; Thomas Monahan; Ken Anderson

> Subject: Re: TufAmerica v. Diamond, et al.

>

> Fisher's available on the 24th, but in DC. Still waiting to hear from Avery -- until we hear from the Judge, I am keeping the 25th open -- but he indicated he had some flexibility. I will get back to you when I hear from him. I assume we are not going forward on Monday - Ted, please confirm.

>

> Thanks,

>

> Kelly

>

> On Fri, Apr 18, 2014 at 2:19 PM, Benforado, Nathaniel H.
<NBenforado@jenner.com<mailto:NBenforado@jenner.com>> wrote:

> Kelly,

>

> As we discussed yesterday, unless TufAmerica is going to withdraw its claims, we need proposed dates for Fisher and Avery next week. Please provide your response as soon as possible.

>

> Best,

> Nate

>

> From: Kdtalcott

> [mailto:kelly@kdtalcott.com<mailto:kelly@kdtalcott.com>]

> Sent: Wednesday, April 16, 2014 8:48 PM

>

> To: Benforado, Nathaniel H.

> Cc: Ted Max; Bart, Andrew H.; Thomas Monahan; Ken Anderson

> Subject: Re: TufAmerica v. Diamond, et al.

>

> Confirmed. Thanks.

>

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>

> On Apr 16, 2014, at 8:46 PM, "Benforado, Nathaniel H."
<NBenforado@jenner.com<mailto:NBenforado@jenner.com>> wrote:

> Kelly,

>

> Thanks, that should be enough time. Let's plan on 10.

>

> Best,

> Nate

>

> From: Kdtalcott [mailto:kelly@kdtalcott.com]

> Sent: Wednesday, April 16, 2014 8:35 PM

> To: Benforado, Nathaniel H.

> Cc: Ted Max; Bart, Andrew H.; Thomas Monahan; Ken Anderson

> Subject: Re: TufAmerica v. Diamond, et al.

>

> I am, but I have another call at 10:30. If you think we can cover things in a half hour, that will work.

>

> kdt

>

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>

> On Apr 16, 2014, at 8:30 PM, "Benforado, Nathaniel H."
<NBenforado@jenner.com<mailto:NBenforado@jenner.com>> wrote:

> Kelly,

>

> Are you available for a call tomorrow at 10 a.m. to discuss some of these issues?

>

> We can use this dial-in information:

>

> 1-888-858-6182<tel:1-888-858-6182>

> Code: 2128911625<tel:2128911625>

>

> Best,

> Nate

>

>

> _____

> Nathaniel H. Benforado

>

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> From: Kelly Talcott [mailto:kelly@kdtalcott.com]

> Sent: Wednesday, April 16, 2014 5:32 PM

> To: Benforado, Nathaniel H.

> Cc: Ted Max; Bart, Andrew H.; Thomas Monahan; Ken Anderson

> Subject: TufAmerica v. Diamond, et al.

>

> Dear Nate,

>

> This responds to your letter of Monday, April 14 and further to your letter of April 11.

> I have discussed the discovery materials referenced in those letters at length with my client and with one of the Trouble Funk members. I have not yet been able to connect with a second Trouble Funk member, or with the group's former counsel (Raphael Tisdale, whose name appears on UMG000171) who may also be able to shed light on some of these. My response today is thus unfortunately not complete, but in light of your request that I respond by today I am providing this update.

>

> Both "Say What" and "Let's Get Small" were tracks issued by D.E.T.T. Records, a Maryland entity I am told was formed by four of the Trouble Funk band members. It is important to note that D.E.T.T. was not the same as T.T.E.D., which was a DC entity formed by Carl "Maxx" Kidd.

>

> D.E.T.T. appears to have issued "Let's Get Small" in 1982, and "Say What" in 1983. Both recordings preceded the October 11, 1984 agreements (UMG000174 and UMG000167). To the extent the "Exclusive Recording Agreement" (UMG000174) is valid (and I have been given reason to doubt that it is, but am still investigating and am not ready to state a position on that document), both of those recordings and their compositions would fall under the provisions of its section 1.05, excluding from the agreement's scope master recordings and compositions that were recorded prior to the agreement.

>

> It is also unclear that Island ever played any role in publishing "In Times of Trouble," the album that the purported "Exclusive Recording Agreement" claims was "accepted by Island." "In Times of Trouble" appears to have been released by D.E.T.T. (the Trouble Funk entity), not Island, and in 1983, before the agreements at issue were signed. (Note that while "Say What" appears on D.E.T.T.'s "In Times of Trouble," "Let's Get Small" does not.) At a minimum, there is a question as to what exactly "In Times of Trouble" included, and whether

the earlier release of "Say What" by D.E.T.T. removes that track from the scope of any tracks that may have been covered by the purported "Exclusive Recording Agreement."

>

> Also worth noting is that Messrs. Reed, Fisher, and Avery registered the copyright to "Let's Get Small" in 1983, noting a first publication date of 11/1/82, and registered the copyright to "Say What" in 1985, noting a first publication date of 12/29/83. Both publication dates are consistent with the reported release dates of the corresponding D.E.T.T. records.

>

> There are two additional registrations of tracks bearing these same titles, each in the names of Ackee Music, Maxx Kidd's Music, and Hugabut Music -- one for "Let's Get Small" in 1986, noting a first publication date of April 9, 1985 in the UK, and one for "Say What" also in 1986, noting the same first publication date and place. Those registrations may relate to live versions of those works, which I am advised were recorded in the UK in that time frame. In any event, they are inconsistent with the earlier registrations by Reed, Fisher, and Avery.

>

> You have taken the position that my earlier clarification -- or mis-clarification, as it may be -- of requests to admit that defendants had not fully answered is tantamount to an admission that is binding on TufAmerica. I do not agree that requests to admit are binding as admissions on the party making them. There is nothing in FRCP 36 to suggest this, and you have not provided any authority to suggest otherwise.

>

> I have not investigated in any detail the purported post-1984 transfers that you have sent me. (Zee-Kid to Island; Island and Zee-Kid to Ackee and Maxx Kidd; and Ackee to Polygram) and take no position on them, except to point out that they each rely on the viability of the "Exclusive Recording Agreement." And I am not yet ready to state a position on that agreement.

>

> TufAmerica is thus not prepared at this time to withdraw any of its pending claims in this matter. As I indicated, however, despite considerable efforts on my part I have not yet been able to speak to two individuals with original knowledge of the facts. I will continue to make those efforts through the balance of this week. I am aware that time is not on any of our sides, and as I advised Ted Max earlier, I have no intention of using this delay -- which I believe was necessary -- to put any party in a position where it is unable to take the discovery it believes it is reasonably entitled to in this case.

>

> Your threats of a Rule 11 motion are noted. There are, as I have attempted to show you, a number of legitimate factual and legal questions that weigh against bringing such a motion.

>

> The foregoing is without prejudice to any of TufAmerica's rights or remedies in this case.

>

> Please let me know if you have any questions.

>

> Best regards,

>

> Kelly

>

> --

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